

## Summary Ejectment in the Time of COVID, Part 1: The CARES Act

If you are a judicial official hearing summary ejectment actions right now, you have plenty to be confused about. I've recently received a number of inquiries from you asking why you're still receiving CARES Act affidavits (CVM-207), since the eviction moratorium imposed by the Act expired in late July. The short answer is that the affidavit may contain useful information which continues to be relevant to your disposition of an SE case. In this blog post, I'll explain what that information is and what you should do with it.

CARES Act §4204. You may recall that the CARES Act §4204 had three important provisions. First, it prohibited eviction of tenants from "covered dwellings" for failure to pay rent (or fees associated with failing to pay rent) during the period between March 27 and July 24. That provision, of course, has expired. Second, it prohibited landlords from charging such tenants fees related to late payment of rent. Finally, it prohibited landlords from giving tenants notice to vacate during the moratorium period and required at least thirty days for notices given after the moratorium expired.

Note that the last two provisions continue to have potential significance in your courtroom. First, landlords seeking money damages in addition to summary ejectment are not entitled to recover late fees for rent falling due within the moratorium period if the affidavit reveals the rental premises are a *covered dwelling*. Second, a landlord of a *covered dwelling* who is seeking eviction based on non-payment of rent coming due between March 27 and July 24 must have provided the tenant with a thirty-day notice to vacate prior to filing the complaint.

When #3 on the affidavit indicates that the rental property is a *covered dwelling* and the basis for eviction is default in paying rent, the following analysis applies:

First, identify the date of the most recent default in the rent upon which the claim is based.

- If default occurred before July 24, the plaintiff must prove:
- That the tenant was given 30 days' notice to vacate;
- That this notice was given after July 24; and
- That the plaintiff waited at least 30 days after giving notice before filing the complaint.
- If default occurred after July 24, the 30-day notice requirement under 4204 does not apply.

CARES Act §4203. Even if the notice required by §4204 is not an issue, however, a different section of the CARES Act may apply. Sec. §4203 must be taken into consideration if:

- The rental premises are designed for occupancy by five or more families;
- The property secures a "federally backed multifamily mortgage loan" as defined by the Act; and

- The property owner/borrower has obtained a *forbearance* pursuant to the Act, meaning that the mortgage servicer has agreed not to take steps to foreclose even though the borrower fails to make the required loan payments.

A forbearance may not exceed 30 days but may be extended for up to two additional 30-day periods upon request by the landlord. This section of the CARES Act does not expire until December 31 (assuming the national emergency declaration is not terminated prior to that time).

How the affidavit helps: Sec. 4203 protects covered tenants in two distinct ways. First, the borrower may not “evict or initiate the eviction” of a tenant “solely for nonpayment of rent or other fees” while the forbearance is in effect. Second, when a landlord has obtained a forbearance, a tenant being evicted for default in the rent is entitled to a minimum notice to vacate of 30 days. Similar to the §4204 notice discussed above, this notice may not be given until after the forbearance expires.

The affidavit provides information relevant to each of these protections. If Box #4 is checked, indicating that the mortgage is currently in forbearance, the landlord is prohibited from proceeding in a summary ejectment action. (Even if Box #4 is not checked, it may be wise to inquire whether the information on the affidavit is current as of the day of trial.)

If the mortgage is not currently in forbearance, but Box #6 is checked, an additional question is necessary: is the mortgage loan on the property a *multi-family* mortgage loan? If so, here’s the analysis for that issue:

First, determine whether the landlord has received a forbearance since March 27. If not, §4203 does not apply.

If so, determine

- When the forbearance period ended,
- when the landlord gave the tenant notice to vacate,
- whether notice was given after expiration of the forbearance period, and
- whether notice was given at least 30 days prior to filing the complaint.

I hope this information is helpful to judicial officials in determining whether and how the CARES Act requirements continue to apply to summary ejectment actions coming on for hearing between now and the end of the year. In Part 2 – coming soon -- I’ll review the CDC Order. Stay tuned!